IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 24442 of 2007(I)

PETITIONER:

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1. LEELA MANIYAMMA, S/O.LATE KUTTAN PALLAI,
   SREEVIHAR, PADANAYARKULANGARA NORTH,KARUNAGAPPALLY
   KOLLAM.

2. USHA DEVI AMMA,
   SREEVIHAR, PADANAYARKULANGARA NORTH,KARUNAGAPPALLY
   KOLLAM.

BY ADV. SRI.S.SUDHEESHKAR
SRI. K.SIJU
SRI.PRATHEESH.P
SRI.K.VINAYAKUMAR

RESPONDENTS:

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1. THE ASSISTANT SALES TAX COMMISSIONER,
   KOLLAM.

2. DEPUTY TAHSILDAR (R.R),
   KARUNAGAPPALLY, KOLLAM.

3. K. SANTHOSH KUMAR,
   PUTHENMADOM, PADANAYARKULANGARA NORTH,
   KARUNAGAPPALLY, KOLLAM.

R1&2 BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON 10/08/2007 DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24442 of 2007

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Dated this the 10th day of August, 2007.

JUDGMENT

Petitioners are challenging recovery proceedings initiated against them for the liability due from third respondent who is first petitioner's son. It is conceded that atleast one item of property partly belongs to the defaulter because after death of his father, third respondent has a share in the property. The second respondent can attach and sell only the property of the defaulter. If recovery can be made by sale of undivided right, second respondent will notify undivided right for sale, sell the same and recover the arrears. On the other hand, if sale of undivided right will not serve the purpose of recovery of full arrears, it will be open to the second respondent to file a suit for partition and sell the property after partition and separation of the defaulter's share. The W.P. is disposed of directing the second respondent not to attach and sell any property belonging to the petitioners in which defaulter has no right.

C.N.RAMACHANDRAN NAIR
Judge

pms